

P.L. 92-581 LAWS OF 92nd CONG.—2nd SESS.

Oct. 27

"(e) Provisions of this section shall be effective only in the cases of members who, on or before June 30, 1975, execute the required written agreement to remain in active service."; and

(4) by inserting the following new item in the analysis:

"312a. Special pay: nuclear-trained and qualified enlisted members."

Sec. 2. The provisions of section 7545(c) of title 10, United States Code, shall not apply with respect to any gift made after the date of enactment of this Act and prior to January 1, 1973, by the Department of the Navy to the city of Clifton Forge, Virginia, of a Baldwin steam locomotive (No. 606) which is no longer needed by the Navy and which has certain historical significance for the city of Clifton Forge, Virginia.

Approved October 27, 1972.

## PUBLIC BUILDINGS—SELECTION OF ARCHITECTS AND ENGINEERS

*For Legislative History of Act, see p. 4767*

PUBLIC LAW 92-582; 86 STAT. 1278

[H. R. 12807]

An Act to amend the Federal Property and Administrative Services Act of 1949 in order to establish Federal policy concerning the selection of firms and individuals to perform architectural, engineering, and related services for the Federal Government.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.)<sup>64</sup> is amended by adding at the end thereof the following new title:

### "TITLE IX—SELECTION OF ARCHITECTS AND ENGINEERS

#### "DEFINITIONS

"Sec. 901. As used in this title—

"(1) The term 'firm' means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

"(2) The term 'agency head' means the Secretary, Administrator, or head of a department, agency, or bureau of the Federal Government.

"(3) The term 'architectural and engineering services' includes those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

#### "POLICY

"Sec. 902. The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for archi-

64. 40 U.S.C.A. § 471 et seq.

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## PUBLIC BUILDINGS

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tectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

"REQUESTS FOR DATA ON ARCHITECTURAL AND ENGINEERING SERVICES

"Sec. 903. In the procurement of architectural and engineering services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him, no less than three of the firms deemed to be the most highly qualified to provide the services required.

"NEGOTIATION OF CONTRACTS FOR ARCHITECTURAL AND  
ENGINEERING SERVICES

"Sec. 904. (a) The agency head shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Government. In making such determination, the agency head shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof.

"(b) Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price he determines to be fair and reasonable to the Government, negotiations with that firm should be formally terminated. The agency head should then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency head should terminate negotiations. The agency head should then undertake negotiations with the third most qualified firm.

"(c) Should the agency head be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached."

Approved October 27, 1972.

# UNITED STATES CODE ANNOTATED

## Title 40

### Public Buildings, Property, and Works § 301 to End

### Cumulative Annual Pocket Part

*For Use In 1981*

Replacing prior pocket part in back of volume

Includes the Laws of the  
96th CONGRESS, SECOND SESSION (1980)  
through Public Law 96-486, approved  
December 1, 1980

For close of Notes of Decisions  
See page 3

### CURRENT LAWS AND LEGISLATIVE HISTORY

Consult  
United States Code  
Congressional and Administrative News

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## 40 § 514 PUBLIC BUILDINGS, ETC.

### § 514. General provisions

[See main volume for text of (a) to (e)]

#### Transfer of functions

(d) There shall be transferred from the Department of State to each other executive agency affected by this subchapter such records, property, personnel, obligations, commitments, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, as the Director of the Bureau of the Budget shall determine to relate to functions of such agency under this subchapter which have heretofore been administered by the Department of State.

(e) Redesignated (d).

As amended Oct. 19, 1980, Pub.L. 96-470, Title I, § 101(a), 94 Stat. 2237.

**1980 Amendment.** Subsec. (d). Pub.L. 96-470 redesignated former subsec. (e) as (d) and struck out subsec. (d), which provided that the head of each executive agency responsible for the disposal of foreign excess property under this subchapter submit a report to Congress in January of each year, or at such other desirable times, relative to its activities under this subchapter, accompanied by appropriate recommendations.

Subsec. (e). Pub.L. 96-470 redesignated former subsec. (e) as (d).

**Legislative History.** For legislative history and purpose of Pub.L. 96-470, see 1980 U.S.Code Cong. and Adm.News, p. —.

## SUBCHAPTER IV—RECONSTRUCTION FINANCE CORPORATION PROPERTY

### § 521 to 524. Repealed. Pub.L. 91-466, § 2, Oct. 17, 1970, 84 Stat. 990

Section 521. Act June 30, 1949, c. 288, Title VII, § 701, as added Aug. 12, 1955, c. 674, § 3, 69 Stat. 722, stated congressional declaration of policy regarding Reconstruction Finance Corporation property.

Section 522. Act June 30, 1949, c. 288, Title VII, § 702, as added Aug. 12, 1955, c. 674, § 3, 69 Stat. 722, and amended June 25, 1959, Pub.L. 86-70, § 30(b), 73 Stat. 148; July 12, 1960, Pub.L. 86-624, § 27(d), 74 Stat. 418, defined the terms State, real property, local taxing authority, real property tax, Government department, transfer, and Reconstruction Finance Corporation as used in the subchapter.

Section 523. Act June 30, 1949, c. 288, Title VII, § 703, as added Aug. 12, 1955, c. 674, § 3, 69 Stat. 722, and amended Aug. 1, 1958, Pub.L. 85-579, § 1(a), 72 Stat. 456; June 8, 1960, Pub.L. 86-498, § 1(a), 74 Stat. 165; Oct. 10, 1962, Pub.L. 87-767, § 1(b), 76 Stat. 805; June 29, 1964, Pub.L. 88-330, § 1(b), 78 Stat. 226; July 7, 1967, Pub.L. 90-50, § 1(b), 81 Stat. 119; Oct. 17, 1970, Pub.L. 91-466, § 1(b), 84 Stat. 990, provided that failure of Government department to make payment authorized by former section 523 of this title would not give rise to any penalty or subject the property to any lien or foreclosure, exempted certain categories of real property from payments, and limited liability for any payment in lieu of taxes for any period before Jan. 1, 1955 or after Dec. 31, 1970.

**Effective Date of Repeal.** Section 2 of Pub.L. 91-466 provided that Title VII of the Federal Property and Administrative Services Act of 1949 [former sections 521 to 524 of this title] is repealed as of Jan. 1, 1971.

## SUBCHAPTER VI—SELECTION OF ARCHITECTS AND ENGINEERS

### § 541. Definitions

As used in this subchapter

(1) The term "firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

(2) The term "agency head" means the Secretary, Administrator, or head of a department, agency, or bureau of the Federal Government.

(3) The term "architectural and engineering services" includes those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

June 30, 1949, c. 288, Title IX, § . . . , as added Oct. 27, 1972, Pub.L. 92-582, 86 Stat. 1278.

Legislative History. For legislative see 1972 U.S.Code Cong. and Adm.News, history and purpose of Pub.L. 92-582, p. 4787.

**§ 542. Congressional declaration of policy**

The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices. June 30, 1949, c. 288, Title IX, § 902, as added Oct. 27, 1972, Pub.L. 92-582, 86 Stat. 1279.

Legislative History. For legislative see 1972 U.S.Code Cong. and Adm.News, history and purpose of Pub.L. 92-582, p. 4787.

**§ 543. Requests for data on architectural and engineering services**

In the procurement of architectural and engineering services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him, no less than three of the firms deemed to be the most highly qualified to provide the services required.

June 30, 1949, c. 288, Title IX, § 903, as added Oct. 27, 1972, Pub.L. 92-582, 86 Stat. 1279.

Legislative History. For legislative see 1972 U.S.Code Cong. and Adm.News, history and purpose of Pub.L. 92-582, p. 4787.

**§ 544. Negotiation of contracts for architectural and engineering services**

(a) The agency head shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Government. In making such determination, the agency head shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof.

(b) Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price he determines to be fair and reasonable to the Government, negotiations with that firm should be formally terminated. The agency head should then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency head should terminate negotiations. The agency head should then undertake negotiations with the third most qualified firm.

(c) Should the agency head be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.

June 30, 1949, c. 288, Title IX, § 904, as added Oct. 27, 1972, Pub.L. 92-582, 86 Stat. 1279.

Legislative History. For legislative history and purpose of Pub.L. 92-582, see 1972 U.S.Code Cong. and Adm.News, p. 4787.

**1. Factors considered**

Factors which were used in fulfilling requirement to negotiate contracts for ar-

chitectural and engineering services on basis of demonstrated confidence and qualifications for type of professional services required and which included institutional maturity, organizational framework, management plans and approach, management group experience,

**40 § 544****PUBLIC BUILDINGS, ETC.**

and availability of disciplines were not violative of this chapter as unduly stressing those factors most likely to yield selection of a large, established firm than a small minority one with individual rather than institutional competence and qualifications. *Mikkilineni v. United Engineers & Constructors, Inc.*, D.C.Pa.1980, 485 F. Supp. 1292.

**CHAPTER 12—CONSTRUCTION, ALTERATION, AND ACQUISITION OF PUBLIC BUILDINGS**

Sec.

- 601a.** Duties of Administrator; Federal agency accommodations; historical and architectural preservation of public buildings; consultation with Governors, agencies, and chief executive officers [New].  
**602a.** Lease-purchase contracts [New].  
 (a) Authority of Administrator; terms; vesting of title; application of installment payments to purchase price; procedures; report of negotiations to congressional committees; solicitation of proposals.  
 (b) Contract provisions; limitations on amount of payments.  
 (c) Utilization of funds for payments.  
 (d) State and local taxes.  
 (e) Agreements to effectuate purposes; development and improvement of land; construction of projects previously approved; increase of estimated maximum cost.  
 (f) Submission and approval of prospectus as prerequisite; exceptions; procedure.  
 (g) Expiration of contracting authority.  
 (h) Prohibition on providing space until expiration of 30 days from notification of congressional committees by Administrator.  
**612a.** Additional definitions [New].  
**616.** Dwight D. Eisenhower Memorial Bicentennial Civic Center [New].

- (a) Development, construction, operation, and maintenance of facilities for conventions, exhibitions, meetings, and other social, cultural, and business activities; location.  
 (b) Plan, design, and costs of civic center; administrative approval and review; filing plans showing opening, extension, widening, or closing of streets, roads, highways, and alleys.  
 (c) Land acquisition.  
 (d) Contract authority; leases; term, nominal rental; purchase contracts; payment term, vesting of title in the District of Columbia; application of installment payments to purchase price, provisions securing performance of obligations, amortization, interest rate, reimbursement of contractors for certain costs, and Congressional Committee approval of design, plans, and specifications.  
 (e) Full faith and credit of the District of Columbia.  
 (f) Gifts, services, securities, and other property; acceptance and administration; operation of civic center; District of Columbia or other entity; contractual operation; terms and conditions, employment of Federal, District of Columbia, and voluntary personnel.

**§ 601. Prohibition on construction of buildings except by Administrator of General Services**

*Short Title of 1976 Amendment.* Pub. L. 94-541, Title I, § 101, Oct. 18, 1976, 90 Stat. 2905, provided that: "This title [which enacted sections 601a and 612a of

this title and amended sections 400, 606, and 611 of this title] may be cited as the 'Public Buildings Cooperative Use Act of 1976'."

**§ 601a. Duties of Administrator; Federal agency accommodations; historical and architectural preservation of public buildings; consultation with Governors, agencies, and chief executive officers**

(a) In order to carry out his duties under this title and under any other authority with respect to constructing, operating, maintaining, altering, and otherwise managing or acquiring space necessary for the accommodation of Federal agencies and to accomplish the purposes of this title, the Administrator shall—

- (1) acquire and utilize space in suitable buildings of historic, architectural, or cultural significance, unless use of such space would not prove feasible and prudent compared with available alternatives;
- (2) encourage the location of commercial, cultural, educational, and recreational facilities and activities within public buildings;
- (3) provide and maintain space, facilities, and activities, to the extent practicable, which encourage public access to and stimulate

## CHAPTER 10—MANAGEMENT AND DISPOSAL OF GOVERNMENT PROPERTY

### § 542. Congressional declaration of policy

#### 1. Grant-funded procurements

Architectural and engineering procurement procedures contained in sections 543 and 544 of this title, mandatory for federal procurements for such architectural and engineering services, were not per se applicable to procurements by the Hickling County Regional Planning Commission, a grantee under a community development grant by the Department of Housing and Urban Development, 1980, 50 Comp.Gen. 251.

## CHAPTER 16—GENERAL SERVICES ADMINISTRATION

### 758a. Retention of surplus generated from operation of General Supply Fund [New].

### § 754. Redistribution of Administrator's functions

#### 1. Office space

Neither the All Writs Act, section 1651 of Title 28, nor the Declaratory Judgment Act, section 2201 of Title 28, conferred subject-matter jurisdiction upon district court to hear bankruptcy judge's suit to compel the General Services Administration to afford him a certain amount of space for the performance of his official duties. *Votolato v. Freeman*, D.C.N.H.1981, 8 B.R. 788.

### § 756. General Supply Fund

**Additional Increases in General Supply Fund.** 1981—Pub.L. 97-12, Title I, § 112, June 5, 1981, 95 Stat. 75.

### § 756a. Retention of surplus generated from operation of General Supply Fund

The Administrator of the General Services Administration is authorized after June 5, 1981, to retain from any surplus generated from the operation of the General Supply Fund such sums as may be necessary to maintain a sufficient level of inventory of personal property to meet the needs of the Federal agencies.

Pub.L. 97-12, Title I, § 112, June 5, 1981. 95 Stat. 75.

**Codification.** Section was enacted as part of the Supplemental Appropriations and Rescission Act, 1981, and not as part of the Federal Property and Administrative Services Act of 1949, which enacted this chapter.

## CHAPTER 17A—ALASKA FEDERAL-CIVILIAN ENERGY EFFICIENCY SWAP

### §§ 793 to 793d

[For text, see 1980 Laws Special Pamphlet]

## CHAPTER 18—NATIONAL VISITOR CENTER FACILITIES; CAPITOL GUIDE SERVICE

### § 809. Steam for Union Station-National Visitor Center Complex; contract; costs

[For text, see 1980 Laws Special Pamphlet]